

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Tressa R. Glover, <i>aka Tressa R. Glover Parker</i> ,)	C/A No. 5:08-2399-JFA-BM
)	
Appellant,)	
)	
)	Report and Recommendation
)	
vs.)	
)	
William K. Stephenson, Jr.,)	
)	
Appellee.)	

This matter is before the Court because of Appellant's failure to comply with the undersigned's Order of June 23, 2008 (Entry 6), and because of Appellant's failure to prosecute the case in a timely manner. This case was filed by Appellant on June 18, 2008 as a bankruptcy appeal without payment of the filing fee and without a motion for leave to proceed *in forma pauperis*. Under the Court's initial Order in this case, Appellant was directed to pay the filing fee or submit appropriate documents to apply to proceed *in forma pauperis*. The time permitted under the Order to bring the case into proper form expired on July 16, 2008, but no response was received from Appellant even though the mail in which the Order was sent to Appellant was not returned as undeliverable. This indicates that Appellant received the Order, but chose not to respond.

Applying the four-factor test of *Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978) to the circumstances of this case, it is clear that Appellant's failure to comply with the initial Order in this case indicates an intent on Appellant's part not to prosecute this case. Accordingly, it is recommended that this case be dismissed *without prejudice* due to Appellant's failure to comply with this Court's Order and failure to prosecute the case. *See* Fed.R.Civ.P. 41(b)(district courts may dismiss an action if a Appellant fails to comply with "any order of the court."); *see also Ballard v.*



Carlson, 882 F.2d 93, 95 (4th Cir. 1989)(dismissal with prejudice appropriate where warning given);

Chandler Leasing Corp. v. Lopez, 669 F.2d 919, 920 (4th Cir. 1982)(court may dismiss *sua sponte*).

Appellant's attention is directed to the important notice on the following page.



Bristow Marchant
United States Magistrate Judge

August 15, 2008
Columbia, South Carolina



Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court judge need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

A handwritten signature in black ink, appearing to be "R. H. H.", is located in the bottom left corner of the page.